

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
EASTERN DIVISION

Johnny C. Mitchell III, :  
Petitioner : Civil Action 2:09-cv-00260  
v. : Judge Smith  
Warden, Lebanon Correctional : Magistrate Judge Abel  
Institution, :  
Respondent :  
:

**ORDER**

Petitioner Johnny C. Mitchell III, a State prisoner, brings this action under 28 U.S.C. §2254 alleging that he is in custody in violation of the Constitution of the United States. This matter is before the Court on Magistrate Judge Abel's July 2, 2009 Report and Recommendation that the petition for writ of habeas corpus under 28 U.S.C. §2254 be denied because it is barred by the one-year statute of limitations under 28 U.S.C. § 2244(d)(1).

On November 28, 2001, petitioner Mitchell pleaded guilty to two counts of aggravated murder, one count of aggravated robbery and one count of aggravated burglary in the Court of Common Pleas for Guernsey County, Ohio. He was sentenced to a term of life in prison. He did not file a timely appeal of the judgment of conviction. He did file a motion to withdraw his guilty plea on August 13, 2004. That motion was denied, and the Ohio Court of Appeals affirmed that decision on appeal.

On July 14, 2009, petitioner Mitchell filed objections to the Report and

Recommendation. Petitioner argues that, contrary to the Report and Recommendation, he did file a delayed appeal from the Ohio Court of Appeals's January 5, 2006 decision affirming the trial Court's decision denying his motion to withdraw his guilty plea. However, as the Magistrate Judge held, Mitchell's conviction became final on December 28, 2001, thirty days after the entry of judgment. Rule 4(A), Ohio R. App. P. The limitation period begins to run from that date. 28 U.S.C. §2244(d)(1)(A). Mitchell had one year from that date to file a federal petition for writ of habeas corpus. 28 U.S.C. § 2244(d)(1)(A). He failed to do so. Consequently, his habeas corpus petition is barred by the one-year statute of limitations. 2244(d)(1)(A).

Upon *de novo* review as required by 28 U.S.C. §636(b)(1)(B), the Court ADOPTS the Report and Recommendation.

The petition for writ of habeas corpus is DENIED as barred by the statute of limitations. This action is hereby DISMISSED. The Clerk of Court is DIRECTED to enter JUDGMENT for respondent.

s/ George C. Smith  
George C. Smith  
United States District Judge